

February 2006

MJI Publications Updates, Part 1 of 2

Child Protective Proceedings Benchbook (Revised Edition)

Contempt of Court Benchbook (Third Edition)

Crime Victim Rights Manual (Revised Edition)

Criminal Procedure Monograph 1—Issuance of Complaints & Arrest Warrants (Third Edition)

Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Third Edition)

Criminal Procedure Monograph 4—Felony Arraignments in District Court (Third Edition)

Criminal Procedure Monograph 5—Preliminary Examinations (Third Edition)

Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Criminal Procedure Monograph 8—Felony Sentencing

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 13

Initial Dispositions

13.2 Purpose of Initial Dispositional Hearings

Near the bottom of page 312, insert the following text before the last paragraph:

In *In re AMAC*, ___ Mich App ___ (2006), the Court of Appeals reversed the trial court's order terminating respondent's parental rights, finding the trial court's failure to afford respondent a dispositional hearing constituted error. Following the child's birth, the Department of Human Services filed a petition seeking termination of respondent's parental rights based on prior voluntary terminations of her parental rights and other grounds. At the conclusion of the adjudicative hearing, the trial court issued a written opinion and order terminating respondent's parental rights without conducting a dispositional hearing. The Court of Appeals emphasized that "[t]he dispositional phase is particularly important when permanent termination is sought and the respondent entered a plea of admission, a plea of no contest, or when one of the statutory grounds for termination is clearly and convincingly established during the adjudicative phase because it provides the respondent with an opportunity to persuade the court that, although a statutory ground for termination is met, termination is not in the best interests of the child." The failure to afford respondent a dispositional hearing precluded her opportunity to present evidence that may have been either inadmissible or irrelevant in the adjudicative phase of the proceedings to convince the trial court that termination is clearly not in the child's best interests, a right afforded by MCL 712A.19b(5). The Court of Appeals further noted the failure of the trial court to address the child's best interests in its opinion, as required by MCL 712A.19b(1). Consequently, respondent's rights pursuant to MCL 712A.19b(5), MCR 3.973, and MCR 3.977(E) were wrongfully denied, and the Court of Appeals vacated the order terminating respondent's parental rights and remanded the case to the trial court for a dispositional hearing.

CHAPTER 18

Hearings on Termination of Parental Rights

18.1 When the Court May Consider a Request for Termination of Parental Rights

Near the bottom of page 374, insert the following case summary after the first paragraph:

The Court of Appeals reversed a trial court's order terminating parental rights, determining the trial court erred in failing to provide the respondent a dispositional hearing in accordance with MCR 3.973. *In re AMAC*, ___ Mich App ___, ___ (2006). The Court of Appeals emphasized that "[t]he dispositional phase is particularly important when permanent termination is sought and the respondent entered a plea of admission, a plea of no contest, or when one of the statutory grounds for termination is clearly and convincingly established during the adjudicative phase because it provides the respondent with an opportunity to persuade the court that, although a statutory ground for termination is met, termination is not in the best interests of the child."

In *AMAC*, the Department of Human services filed a petition seeking termination of respondent's parental rights after the birth of the child based on prior voluntary terminations of her parental rights and other grounds. The trial court improperly entered an opinion and order terminating respondent's parental rights following an adjudicative trial without conducting a dispositional hearing as required by MCR 3.973. Based on the erroneous denial of respondent's rights under MCL 712A.19b(5), MCR 3.973, and MCR 3.977(E), the Court of Appeals vacated the order terminating respondent's parental rights to the child and remanded the matter for a dispositional hearing.

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Update: Contempt of Court Benchbook (Third Edition)

CHAPTER 1

The Nature of the Contempt Power

1.4 Courts' Inherent Authority to Exercise Contempt Power

A. Statutory Provisions Illustrating Use of Courts' Contempt Powers

Effective December 27, 2005, 2005 PA 326 amended MCL 600.1701.

In "(c)" of the quoted text on page 3, remove the word "duly."

Replace the quotation of "(e)" on page 3 with the following:

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.

CHAPTER 1

The Nature of the Contempt Power

1.4 Courts' Inherent Authority to Exercise Contempt Power

A. Statutory Powers Illustrating Use of Courts' Contempt Powers

On page 5, replace the quotation of "(l)" with the following:

(l) The publication of a false or grossly inaccurate report of the court's proceedings, but a court shall not punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.

CHAPTER 5

Common Forms of Contempt of Court

5.8 Failure to Pay Money Judgment

A. Statute

Effective December 27, 2005, 2005 PA 326 amended MCL 600.1701(e). At the bottom of page 60, replace the quotation of MCL 600.1701(e) with the following:

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.

Because this amendment eliminated the restriction on use of the contempt power only where execution could not be awarded, the amendment broadens the courts' authority to use the contempt power beyond those circumstances described in subsections (A)–(E).

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.8 Assessments and Funding

A. Assessments of Convicted and Adjudicated Offenders

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905(1). On page 25, replace the first sentence of this subsection with the following:

The court must order a “crime victim’s rights fund assessment” against “each person charged with an offense that is a felony, a serious misdemeanor, or a specified misdemeanor, that is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal” as follows:

CHAPTER 10

Restitution

10.19 Payment of Restitution When Defendant or Juvenile Is Sentenced to Jail or the Department of Corrections or Placed in a Juvenile Facility

B. Payment of Restitution When Defendant Is Sentenced to the Department of Corrections

At the end of the January 2006 update to page 340, add the following information:

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k, which allows a court to impose and collect fines, costs, assessments, and fees. Also effective January 1, 2006, 2005 PA 325 added MCL 769.1l, which requires the Department of Corrections to deduct money from a prisoner's account to pay such fines, costs, assessments, and fees in the same manner as money is deducted to pay restitution. However, orders of restitution pursuant to MCL 791.220h or the Crime Victim's Rights Act are to receive priority over the orders described in MCL 769.1l. MCL 769.1l.

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Update: Criminal Procedure Monograph 1—Issuance of Complaints & Arrest Warrants (Third Edition)

Part A — Commentary

1.1 Introduction

Effective January 1, 2006, MCR 6.001(B) was amended to limit the scope of MCR 6.102's application in misdemeanor cases. Replace the third sentence in the first paragraph on page 2 with the following language:

Effective January 1, 2006, MCR 6.102(D) and (F) also govern arrest warrants in misdemeanor cases. MCR 6.001(B).

Part A — Commentary

1.13 Interim Bail Provisions in Warrant

Effective January 1, 2006, MCR 6.001(B) was amended to limit the scope of MCR 6.102's application in misdemeanor cases. Replace the text following the quotation of MCR 6.102(D) near the bottom of page 24 with the following language:

Effective January 1, 2006, MCR 6.102(D) and (F) apply to misdemeanor cases. MCR 6.001(B).

Part A — Commentary

1.13 Interim Bail Provisions in Warrant

Misdemeanors.

Effective January 1, 2006, MCR 6.001(B) was amended to limit the scope of MCR 6.102's application in misdemeanor cases. Replace the first sentence in the first full paragraph on page 26 with the following language:

In addition to complying with the requirements of MCR 6.102(D) and (F), discussed above, cases involving misdemeanors must also comply with MCL 780.581 et seq.

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

Part A—Commentary

2.13 The Exclusionary Rule and Good Faith Exception

Insert the following case summary after the second full paragraph near the middle of page 29:

Even where a search warrant is based in part on tainted evidence obtained as a result of an officer's Fourth Amendment violation—"fruit of the poisonous tree"—the good-faith exception to the exclusionary rule may apply to evidence seized pursuant to the warrant if "an objectively reasonable officer could have believed the seizure valid." *United States v McClain*, 430 F3d 299, 308 (CA 6, 2005), quoting *United States v White*, 890 F2d 1413, 1419 (CA 8, 1989).

In *McClain*, after a nearby resident reported that lights were on at an unoccupied house in the neighborhood, police officers searched the residence without a warrant and without having probable cause to conduct a search of the residence. *McClain, supra* at 302–303. Officers entered the residence through a door that was "slightly ajar" even though the officers "observed no movement in or around the home, no signs of forced entry or vandalism, and no suspicious noises or odors emanating from the house." *Id.* at 305–306. During their warrantless search of the home, the officers discovered evidence that the basement was being readied to house "a marijuana-grow operation." *Id.* at 303. Because no exception to the warrant requirement justified the warrantless search, the defendant argued that any evidence seized during the "execution of search warrants issued on the basis of evidence obtained as a result of that initial warrantless search" should be suppressed. *Id.* at 301.

The district court agreed with the defendant and suppressed the evidence. *McClain, supra* at 301–302. The Sixth Circuit Court of Appeals concluded that the good-faith exception to the exclusionary rule applied to the evidence seized as a result of the "tainted" search warrant and reversed the district court's decision. *Id.* at 302, 307. According to the Sixth Circuit:

“The facts surrounding these officers’ warrantless entry into the house at 123 Imperial Point were not sufficient to establish probable cause to believe a burglary was in progress, but we do not believe that the officers were objectively unreasonable in suspecting that criminal activity was occurring inside [the defendant’s] home, and we find no evidence that the officers knew they were violating the Fourth Amendment by performing a protective sweep of the home. More importantly, the officers who sought and executed the search warrants were not the same officers who performed the initial warrantless search, and [the officer’s] warrant affidavit fully disclosed to a neutral and detached magistrate the circumstances surrounding the initial warrantless search. . . . Because the officers who sought and executed the search warrants acted with good faith, and because the facts surrounding the initial warrantless search were close enough to the line of validity to make the executing officers’ belief in the validity of the search warrants objectively reasonable, we conclude that despite the initial Fourth Amendment violation, the [good faith] exception bars application of the exclusionary rule in this case.” *McClain, supra* at 308–309.

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Update: Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Third Edition)

Part A—Commentary on Misdemeanor Arraignments

3.1 Applicable Court Rules

Effective January 1, 2006, MCR 6.001(B) was amended to limit the scope of MCR 6.102's application in misdemeanor cases. Replace the third bullet on page 3 with the following language:

- MCR 6.102(D) and (F) (arrest on a warrant);*

*Effective
January 1,
2006.

Part A—Commentary on Misdemeanor Arraignments

3.4 Record Requirements

Effective December 27, 2005, 2005 PA 326 repealed MCL 600.8611. Therefore, delete the reference to MCL 600.8611 in the partial paragraph at the top of page 10.

3.5 Arraignment on Arrest by Warrant

A. When Arrest Is Made in Same County Where Charged Offense Occurred

Effective January 1, 2006, MCR 6.006 was amended. Replace the quoted paragraph at the bottom of page 10 with the following text:

“(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, arraignments on the information, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.”

Part B—Commentary on Pleas

3.23 Record Requirements for Plea Proceedings

Effective December 27, 2005, 2005 PA 326 repealed MCL 600.8611. Therefore, on page 41, eliminate the reference to MCL 600.8611 at the end of the first paragraph in this section.

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Update: Criminal Procedure Monograph 4—Felony Arraignments in District Court (Third Edition)

Part A—Commentary on Felony Arraignments

4.4 Record Requirements

Effective December 27, 2005, 2005 PA 326 repealed MCL 600.8611. Therefore, delete the reference to MCL 600.8611 after the first sentence in the paragraph on page 7.

Part B—Commentary on Felony Pleas in District Court

4.25 Guilty and Nolo Contendere Pleas

A. Plea Must Be Understanding

Effective January 1, 2006, MCR 6.302 was amended to further specify the information that may be communicated in writing to a defendant pleading guilty or no contest. Delete the paragraph and corresponding side note at the bottom of page 37 and insert the following text immediately before subsection (B) on page 38:

The district court judge may communicate the advice required in MCR 6.302(B)(3) and (B)(5) “by a writing on a form approved by the State Court Administrative Office. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.” MCR 6.302(B).*

Note: Prior to the January 1, 2006, amendment to MCR 6.302(B), a court could communicate in writing the rights contained in MCR 6.302(B)(1)–(3). The amended court rule permits a court to communicate in writing only the rights listed in MCR 6.302(B)(3)—as amended, the court rule no longer allows written communication of the rights contained in MCR 6.302(B)(1) and (2). However, the amended court rule now permits a court to communicate in writing the information contained in MCR 6.302(B)(5)—information not previously authorized in the rule as information communicable to a defendant in writing.

*As amended,
effective
January 1,
2006.

February 2006

Update: Criminal Procedure Monograph 5—Preliminary Examinations (Third Edition)

Part A—Commentary

5.29 Examination of Witnesses

Video or telephonic testimony.

Effective January 1, 2006, MCR 6.006 was further amended. Replace the first quoted paragraph near the bottom of page 51 with the following text:

“(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: . . . waivers and adjournments of preliminary examinations.”

Part A—Commentary

5.32 Records of Preliminary Examinations

Effective December 27, 2005, 2005 PA 326 repealed MCL 600.8611. Therefore, on page 53, delete the second paragraph and related quotation and the reference to MCL 600.8611 at the end of the section.

Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Part 2—Individual Motions

6.36 Motion to Suppress Evidence Seized Pursuant to a Defective Search Warrant

Insert the following case summary before the paragraph beginning with “The good-faith exception to the exclusionary rule...” on page 98:

Even where a search warrant is based in part on tainted evidence obtained as a result of an officer’s Fourth Amendment violation—“fruit of the poisonous tree”—the good-faith exception to the exclusionary rule may apply to evidence seized pursuant to the warrant if “an objectively reasonable officer could have believed the seizure valid.” *United States v McClain*, 430 F3d 299, 308 (CA 6, 2005), quoting *United States v White*, 890 F2d 1413, 1419 (CA 8, 1989).

In *McClain*, after a nearby resident reported that lights were on at an unoccupied house in the neighborhood, police officers searched the residence without a warrant and without having probable cause to conduct a search of the residence. *McClain*, *supra* at 302–303. Officers entered the residence through a door that was “slightly ajar” even though the officers “observed no movement in or around the home, no signs of forced entry or vandalism, and no suspicious noises or odors emanating from the house.” *Id.* at 305–306. During their warrantless search of the home, the officers discovered evidence that the basement was being readied to house “a marijuana-grow operation.” *Id.* at 303. Because no exception to the warrant requirement justified the warrantless search, the defendant argued that any evidence seized during the “execution of search warrants issued on the basis of evidence obtained as a result of that initial warrantless search” should be suppressed. *Id.* at 301.

The district court agreed with the defendant and suppressed the evidence. *McClain*, *supra* at 301–302. The Sixth Circuit Court of Appeals concluded that the good-faith exception to the exclusionary rule applied to the evidence

seized as a result of the “tainted” search warrant and reversed the district court’s decision. *Id.* at 302, 307. According to the Sixth Circuit:

“The facts surrounding these officers’ warrantless entry into the house at 123 Imperial Point were not sufficient to establish probable cause to believe a burglary was in progress, but we do not believe that the officers were objectively unreasonable in suspecting that criminal activity was occurring inside [the defendant’s] home, and we find no evidence that the officers knew they were violating the Fourth Amendment by performing a protective sweep of the home. More importantly, the officers who sought and executed the search warrants were not the same officers who performed the initial warrantless search, and [the officer’s] warrant affidavit fully disclosed to a neutral and detached magistrate the circumstances surrounding the initial warrantless search. . . . Because the officers who sought and executed the search warrants acted with good faith, and because the facts surrounding the initial warrantless search were close enough to the line of validity to make the executing officers’ belief in the validity of the search warrants objectively reasonable, we conclude that despite the initial Fourth Amendment violation, the [good faith] exception bars application of the exclusionary rule in this case.” *McClain, supra* at 308–309.

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

1. Searches of Automobiles for Evidence

Insert the following text after the second paragraph on page 101:

In the context of automobile searches, a computer may be considered a container of the data stored in the computer's memory. *People v Dagwan*, ____ Mich App ____, ____ (2005).

Update: Criminal Procedure Monograph 8—Felony Sentencing

Part II—Scoring the Statutory Sentencing Guidelines

8.5 Scoring an Offender’s Prior Record Variables (PRVs)

G. PRV 5—Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications

Insert the following text after the November 2005 update to page 29:

Previous “non-OUIL alcohol-related convictions” are not convictions involving a controlled substance for purposes of scoring PRV 5. *People v Endres*, ___ Mich App ___, ___ (2006).

Part II—Scoring the Statutory Sentencing Guidelines

8.5 Scoring an Offender's Prior Record Variables (PRVs)

H. PRV 6—Relationship to the Criminal Justice System

1. Case Law Under the Statutory Guidelines

Insert the following text before the partial paragraph at the bottom of page 31:

A defendant has “a prior relationship with the criminal justice system” for purposes of scoring PRV 6 when disposition of a misdemeanor crime committed by the defendant is pending at the time the defendant committed the sentencing offense. *People v Endres*, ___ Mich App ___, ___ (2006).

Part II—Scoring the Statutory Sentencing Guidelines

8.6 Scoring an Offender's Offense Variables (OVs)

D. OV 3—Physical Injury to a Victim

2. Case Law Under the Statutory Guidelines

Insert the following text before the partial paragraph at the bottom of page 44:

Points are appropriately scored for OV 3 only where there is record evidence of a victim's injury; a prosecutor's file notes do not constitute record evidence. *People v Endres*, ___ Mich App ___, ___ (2006).

Part II—Scoring the Statutory Sentencing Guidelines

8.6 Scoring an Offender's Offense Variables (OVs)

J. OV 9—Number of Victims

2. Case Law Under the Statutory Guidelines

Insert the following text after the third paragraph on page 58:

Note: In *People v Melton*, ___ Mich App ___, ___ (2006), a panel of the Court of Appeals expressed its disagreement with *People v Knowles*, 256 Mich App 53, 61–63 (2003), in which the Court held that financial institutions could be victims for purposes of OV 9. Although the *Melton* Court was obligated by *Knowles* to affirm the defendant's OV 9 score, the *Melton* Court explained that OV 9 was not intended to account for victims who suffered financial injury, or, as was the case in *Melton*, for victims deprived of other property, and the Court recommended that the issue be resolved by submission to a conflicts panel pursuant to MCR 7.215(J)(3).

Part II—Scoring the Statutory Sentencing Guidelines

8.6 Scoring an Offender's Offense Variables (OVs)

T. OV 19—Threat to the Security of a Penal Institution or Court or Interference with the Administration of Justice or Emergency Services

Insert the following text after the last full paragraph at the bottom of page 79:

A defendant's conduct is properly scored under OV 19 where the defendant threatens to kill a victim of the crime committed. *People v Endres*, ___ Mich App ___, ___ (2006). Without regard to a defendant's intention when the threat was issued, fifteen points are appropriate because the "threats resulted in the interference with the administration of justice, either by preventing the victim from coming forward sooner or impacting his testimony against defendant." *Endres, supra* at ___.

Part VII—Fines, Costs, Assessments, and Restitution

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text before the first paragraph in Part VII, near the bottom of page 156:

MCL 769.1k provides a general statutory basis for a court’s authority to impose specified monetary penalties when sentencing a defendant and to collect the amounts owed at any time. MCL 769.1k states:

“(1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

“(a) The court shall impose the minimum state costs as set forth in [MCL 769.1j].

“(b) The court may impose any or all of the following:

“(i) Any fine.

“(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

“(iii) The expenses of providing legal assistance to the defendant.

“(iv) Any assessment authorized by law.

“(v) Reimbursement under [MCL 769.1f].

“(2) Subsection (1) applies regardless of whether the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation.

“(3) The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under this section by wage assignment.

“(4) The court may provide for the amounts imposed under this section to be collected at any time.”

8.33 Fines

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k, a statute authorizing a court to impose “any fine” on a defendant at the time of sentencing, at the time a deferred adjudication of guilt is entered, or at the time

sentencing is delayed. Replace the first sentence in the first paragraph near the top of page 157 with the following text:

Pursuant to MCL 769.1k, courts have general authority to impose “any fine” on a convicted defendant. According to MCL 769.1k(1)(b)(i), at the time of sentencing or a delay in sentencing or entry of a deferred judgment of guilt, a court may impose any fine on a defendant convicted by plea (guilty or nolo contendere) or found guilty by the court after a hearing or trial. Specific authority to impose a fine, and the maximum amount of that fine, is often included in the language of the applicable penal statute.

Add the following text to the second paragraph on page 157:

The court may require a defendant to pay by wage assignment any fine imposed under MCL 769.1k, and the court may provide that any fine imposed under MCL 769.1k be collected at any time. MCL 769.1k(3), (4).

As a condition of probation.

Insert the following text after the last paragraph on page 157:

The fines authorized by MCL 769.1k(1)(b)(i) also apply when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment any fine imposed under MCL 769.1k, MCL 769.1k(3), and the court may provide that those fines be collected at any time, MCL 769.1k(4).

Part VII—Fines, Costs, Assessments, and Restitution

8.34 Costs

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text after the first paragraph on page 158:

MCL 769.1k is a procedural statute that provides a court with general authority to impose “[a]ny cost in addition to the minimum state cost” when sentencing a defendant in certain circumstances. MCL 769.1k(1)(b)(ii). In addition to the authority to impose costs, MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1). A court may provide for the collection of costs imposed under MCL 769.1k at any time. MCL 769.1k(4).

As a condition of probation.

Insert the following text before the paragraph beginning with “When determining the appropriate amount of costs...” on page 158:

The costs authorized by MCL 769.1k(1)(b)(ii) also apply when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment any cost imposed under MCL 769.1k, MCL 769.1k(3), and the court may provide that those costs be collected at any time, MCL 769.1k(4).

Part VII—Fines, Costs, Assessments, and Restitution

8.34 Costs

C. Costs of a Court-Appointed Attorney

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k to the Code of Criminal Procedure. Insert the following text before the first paragraph on page 166:

MCL 769.1k provides a court with general authority to impose costs on a defendant at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b)(iii) specifically permits a court to impose on a defendant "[t]he expenses of providing legal assistance to the defendant." In addition to the authority to impose on a defendant the costs of his or her legal representation, MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment the cost of legal representation imposed pursuant to MCL 769.1k(1)(b)(iii). A court may provide for the collection of any costs imposed under MCL 769.1k(1) at any time. MCL 769.1k(4).

As a condition of probation.

Insert the following text immediately before Section 8.35 near the bottom of page 167:

The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment the costs of his or her legal representation imposed pursuant to MCL 769.1k(1)(b)(iii), MCL 769.1k(3), and the court may provide that those costs be collected at any time, MCL 769.1k(4).

Part VII—Fines, Costs, Assessments, and Restitution

8.35 Minimum State Costs

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text after the **Note** on the bottom of page 167:

MCL 769.1k provides a court with general authority to impose several specific monetary penalties at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(a) expressly requires a court to "impose the minimum state costs as set forth in [MCL 769.1j]." The language used in MCL 769.1k(1)(a) does not appear to clarify or alter the condition discussed in the above **Note**. The new statutory provision mandates only that a court impose the minimum state costs according to MCL 769.1j, and MCL 769.1j conditions the imposition of minimum state costs on whether a defendant is ordered to pay other fines, costs, or assessments.

In addition to the authority to impose minimum state costs, MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1). A court may provide for the collection of minimum state costs imposed under MCL 769.1k at any time. MCL 769.1k(4).

As a condition of probation.

Insert the following text after the paragraph at the top of page 168:

The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment the minimum state costs imposed pursuant to MCL 769.1k(1)(a), MCL 769.1k(3), and the court may provide that those costs be collected at any time, MCL 769.1k(4).

Part VII—Fines, Costs, Assessments, and Restitution

8.36 Crime Victim Assessment

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905 to require payment of the crime victim assessment whenever a defendant is charged with a qualifying offense and the charge is resolved in a manner specified by the statute. Replace the first paragraph and corresponding side note on page 168 with the following text:

Whenever an individual is charged with a felony offense and the charge “is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal,” the court must order the individual to pay a \$60.00 crime victim assessment. MCL 780.905(1). In contrast to the minimum state cost, which must be ordered for each felony conviction arising from a single case, only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2).

Note: In addition to felony offenses, crime victim assessments must be ordered in cases involving persons charged with “serious” or “specified” misdemeanor offenses. MCL 780.905(1). See Miller, *Crime Victim Rights Manual—Revised Edition* (MJI, 2005), Section 2.8, for more information about crime victim assessments.

Also effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Add the following text after the first paragraph in this section:

MCL 769.1k provides a court with general authority to impose “[a]ny assessment authorized by law” on a defendant at the time a defendant is sentenced, at the time a defendant’s sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b)(iv). MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment an assessment imposed pursuant to MCL 769.1k(1)(b)(iv). A court may provide for the collection of any assessment imposed under MCL 769.1k(1) at any time. MCL 769.1k(4).

As a condition of probation.

Insert the following text immediately before Section 8.37 on page 168:

The general authority to impose the monetary penalties in MCL 769.1k(1)(b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). MCL 769.1k(3) authorizes a court to order that a defendant pay by wage assignment an

assessment imposed pursuant to MCL 769.1k(1)(b)(iv). A court may provide for the collection of any assessment imposed under MCL 769.1k(1) at any time. MCL 769.1k(4).

Part VIII—Specific Types of Sentences

8.40 Probation

Mandatory terms and conditions of probation.

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 173 after the list of items preceded by dashes and before the paragraph beginning with “If a defendant is placed on probation...”:

MCL 769.1k(1)(a) requires a court to impose minimum state costs on a defendant at the time a defendant is sentenced, at the time a defendant’s sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(a) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2).

For minimum state costs ordered pursuant to MCL 769.1k, MCL 769.1k(3) authorizes a court to order that a defendant pay such costs by wage assignment. In addition, a court may provide for the collection of any costs imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

Part VIII—Specific Types of Sentences

8.40 Probation

Discretionary terms and conditions.

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 175 immediately before “**Amending an order of probation**”:

MCL 769.1k(1)(b) provides a court with general authority to impose a fine, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time a defendant is sentenced, at the time a defendant’s sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). A defendant may be required to pay by wage assignment the penalties imposed pursuant to MCL 769.1k(1)(b). MCL 769.1k(3). The court may provide that those penalties be collected at any time. MCL 769.1k(4).

Part VIII—Specific Types of Sentences

8.41 Delayed Sentencing

Other costs.

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text immediately before Section 8.42 on page 179:

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time a defendant's sentence is delayed. MCL 769.1k(3) authorizes a court to order that a defendant pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of any penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

Part VIII—Specific Types of Sentences

8.42 Deferred Adjudication of Guilt

E. Terms and Conditions of Probation Imposed Pursuant to Deferred Adjudication Provisions

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text after the first paragraph on page 183:

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time entry of an adjudication of guilt is deferred. The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). MCL 769.1k(3) authorizes a court to order that a defendant pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of the penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

Part VIII—Specific Types of Sentences

8.43 Youthful Trainee Act—Deferred Adjudication

Terms and conditions imposed pursuant to deferred adjudication provisions.

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 190 before the paragraph beginning with “**Court’s discretion over a youthful trainee’s status**”:

MCL 769.1k provides a court with general authority to impose fines, costs, expenses of providing legal assistance, assessments, and reimbursement under MCL 769.1f on a defendant at the time entry of an adjudication of guilt is deferred. The general authority to impose the monetary penalties listed in MCL 769.1k(1)(a) and (b) also applies when a defendant is placed on probation, probation is revoked, or a defendant is discharged from probation. MCL 769.1k(2). MCL 769.1k(3) authorizes a court to order that a defendant pay those monetary penalties by wage assignment. In addition, a court may provide for the collection of the penalties imposed pursuant to MCL 769.1k at any time. MCL 769.1k(4).

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905 to require payment of the crime victim assessment whenever a defendant is charged with a qualifying offense and the charge is resolved in a manner specified by the statute. Insert the following text after the update described above:

Whenever an individual charged with a felony offense is assigned to youthful trainee status, the court must order the individual to pay a \$60.00 crime victim assessment. MCL 780.905(1). Only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2).

Note: In addition to felony offenses, crime victim assessments must be ordered in cases involving persons charged with “serious” or “specified” misdemeanor offenses. MCL 780.905(1). See Miller, *Crime Victim Rights Manual—Revised Edition* (MJI, 2005), Section 2.8, for more information about crime victim assessments.